

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

ELVIA SERRANO, *Applicant*

vs.

**JACK IN THE BOX, INC.; ACE AMERICAN INSURANCE COMPANY, administered
by GALLAGHER BASSETT SERVICES, INC.; TBS FOODS, INC., d/b/a JACK IN THE
BOX; ARCH INSURANCE COMPANY, administered by SEDGWICK CLAIMS
MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ15175189
Pomona District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND DECISION
AFTER RECONSIDERATION**

Defendant TBS Foods, Inc. ("TBS"), the franchise owner, seeks reconsideration of the March 26, 2025 Findings And Order ("F&O"), wherein the workers' compensation administrative law judge ("WCJ") found applicant sustained an injury arising out of and in the course of employment ("AOE/COE") to her psyche. TBS asserts that the evidence shows that any psyche injury sustained by applicant was sustained solely during her employment with Jack In The Box, Inc. ("JITB"), the corporate entity.

We did not receive an Answer. We did receive a Report and Recommendation on Petition for Reconsideration from the WCJ, recommending that reconsideration be denied.

We have reviewed the Petition and the Report, as well as the record. For the reasons discussed below, we will amend the F&O to defer a finding as to whether applicant sustained a compensable work-related injury pending further development of the record.

FACTUAL BACKGROUND

Applicant filed an Application for Adjudication, alleging a cumulative trauma claim to multiple body parts, including her psyche but also to her arms, shoulders, knees and back, sustained while employed by JITB from January 1, 2019 to July 3, 2021 as a cook. This Application for

Adjudication was later amended to broaden the cumulative trauma period to January 6, 2003 to July 3, 2021, and TBS was added as an employer.

The matter went to trial on March 19, 2025, with the parties stipulating that AOE/COE was the sole issue for trial. (Minutes of Hearing/Summary of Evidence (“MOH/SOE”), 3/19/2025, at p. 2.) The parties also stipulated that applicant was “employed at both Paramount for [JITB] and concurrently with [TBS] at Compton, which is the franchisee.” (*Id.* at p. 1.) Exhibits were admitted without objection, including Qualified Medical Examiner (“QME”) reports from Dr. Ahmad Hajj, an orthopedist, and Dr. John W. Johnson, a psychologist. (*Id.* at pp. 2–3.)¹

Applicant was the only witness to testify. As relevant to the Petition, applicant testified that she worked first for JITB, then at the franchise, where she is currently employed and continues to work full-time. (*Id.* at pp. 4–5.) She also testified that her psychological claim was based on behavior by a manager at JITB; she gets along well with everyone at the franchise and has not had any problems there. (*Id.* at p. 5–6.) She blamed her emotional and stress problems on her relationship with the JITB supervisor, although that was “not the only reason for stress and emotional issues.” (*Id.* at pp. 6–7.)

On March 26, 2025, the WCJ issued the F&O, finding in relevant part that applicant sustained a psyche injury AOE/COE “during the period January 6, 2023 through July 3, 2021 . . . while employed . . . by [JITB] . . . and concurrently by [TBS].” (F&O, at p. 1., ¶ 1.) The WCJ also found that Dr. Johnson’s medical reporting was substantial medical evidence to support this judgement, but that the reporting of Dr. Hajj on the orthopedic complaints was not substantial medical evidence, and therefore that further development of the record was required to determine whether applicant suffered injuries AOE/COE to her other body parts. The appended Opinion on Decision focused primarily on the alleged orthopedic injuries, and mentioned only in passing the psyche claim, without considering whether the evidence supported a finding of AOE/COE against both JITB And TBS.

This Petition for Reconsideration followed.

¹ A single exhibit, D. Ex. B, applicant’s deposition, was marked for identification only. (*Ibid.*)

DISCUSSION

I.

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on April 22, 2025, and 60 days from the date of transmission is Saturday, June 21, 2025. The next business day that is 60 days from the date of transmission is Monday, June 23, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday June 23, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on April 22, 2025 and the case was transmitted to the Appeals Board on April 22, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 22, 2025.

II.

The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision "must be based on admitted evidence in the record" (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] ... For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans, supra*, 68 Cal. 2d at p. 755.)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal. App. 4th 1117, 1121–1122 [63 Cal. Comp. Cases 261].) The Appeals Board has a constitutional

mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal. App. 4th 396, 403 [65 Cal. Comp. Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Initially, we sympathize with the WCJ’s predicament here, having been presented a single issue for decision – AOE/COE – with no indication from the parties that the division of applicant’s employment between JITB and TBS was legally relevant or in question. Additionally, although TBS was added to the claim after the depositions of applicant and Dr. Johnson, diligent review of those depositions would have disclosed the same information applicant gave at trial – namely, that her psychological symptoms arose because of interactions with her JITB supervisor, and that she got along well with everyone at TBS and had no psychological issues there. (See, e.g., J. Ex. 2, Deposition of Dr. Johnson, at p. 12.) The better practice here would have been for JITB and TBS to have recognized the need to include employment as an issue for trial – or at least an issue that required further stipulations as to the respective dates of employment for applicant’s employment with JITB and TBS, as well as potentially further development of the medical record with regard to whether applicant’s employment with TBS contributed to any psyche injury.

Alas, things do not always proceed according to plan. Just as the parties apparently did not foresee the need for further development on applicant’s orthopedic complaints, so too they evidently did not anticipate the need to delineate and address the impact of applicant’s employment with JITB and TBS, two separate legal entities, in determining during whether any injury AOE/COE occurred during both employments.

Confronted with medical and testimonial evidence appearing to indicate that neither applicant nor the QME seems to have believed that applicant’s psyche injury had any significant relationship to her employment for TBS, we therefore believe it was incumbent on the WCJ to defer the determination of whether applicant sustained any psyche injury AOE/COE, pending resolution of the issue raised by that testimony.

To that end, we note that the stipulation of the parties that applicant’s employment with JITB and TBS was “concurrent” appears at least questionable – applicant’s testimony appears to show employment first with JITB and then subsequently with TBS, although the record does not appear to contain any clear dates as to when applicant’s period of employment with JITB ended, or when her period of employment with TBS began. Nor does the F&O, the Opinion on Decision, or the Report appear to include any clear references to the period of injurious exposure for

applicant's psyche injury, or any discussion of whether applicant sustained injury AOE/COE during both employments as opposed to only during her employment with JITB.

The Report suggests that such questions can be resolved at a later date. Although we reiterate our sympathy with awkward position the WCJ was placed in, under these specific circumstances, we cannot agree that a finding of AOE/COE against two "concurrent" employers that do not appear to actually have been concurrent, without any finding as to the date of injury or the date of injurious exposure, and in the face of medical and testimonial evidence calling into question whether one employer contributed to the injury, is of sufficient clarity to be upheld. Rather, we believe that such a finding is more likely to cause trouble down the line than to forestall it.

Our decision here is also informed by the evident need to further develop the record with regard to applicant's orthopedic complaints. Given that necessity, we see nothing to be gained by preserving the ambiguous finding of injury AOE/COE as to applicant's psyche claim. Instead, we think the better practice is to amend the F&O to defer that finding pending further development of the record as well, so that the parties may obtain further information, discuss the issues among themselves, and then return to the WCJ when they are ready to determine AOE/COE with regard to all body parts, including the adjudication of any ancillary issues necessary to that determination.

Accordingly, we will amend the F&O to defer findings as to AOE/COE for all claimed body parts pending further development of the record, and return the matter to the trial level for further proceedings consistent with this opinion. We encourage the parties to confer among themselves to determine the best way to efficiently and expeditiously move the case forward to resolution.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the March 26, 2025 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 26, 2025 Findings of Fact is **AMENDED** as follows:

FINDINGS OF FACT

1. Further development of the record is required to determine whether Elvia Serrano sustained injury arising out of and occurring in the course of her employment to her psyche, shoulders, hands, right forearm, back, knees, and hips.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 19, 2025

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**ELVIA SERRANO
LAW OFFICES OF MARTIN ARTEAGA & ASSOCIATES
LAW OFFICES OF MARCIE DONALD
SAPRA & NAVARRA, LLP**

AW/kl

I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this date.
KL